

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	4:06CR3125
v.)	
)	
TROY J. LINK,)	
)	MEMORANDUM AND ORDER
Defendant.)	
_____)	

Defendant has filed a notice of appeal of his sentence. He has also sought stay of the operation of the sentence. Federal Rule of Criminal Procedure 58(g)(3) provides that Rule 38 governs stays of convictions or sentences pending appeal to a district judge from a judgment entered by a magistrate judge. Rule 38(d) provides, "If the defendant appeals, the court may stay a sentence of probation." Although there is no provision specifically stating that the magistrate judge should consider an application for stay of sentence pending appeal, the remaining provisions dealing with appeals from magistrate judges' judgments and sentences imply such a position. For example, Rule 58(g)(2)(A) grants interlocutory appeals "if a district judge's order could similarly be appealed." Likewise, Rule 58(g)(2)(D) provides that "The scope of the appeal is the same as in an appeal to the court of appeals from a judgment entered by a district judge." Though it may be less than clear, I infer from these provisions that I should rule on the motion for stay. Accordingly,

IT THEREFORE HEREBY IS ORDERED,

That part of Defendant's notice of appeal which constitutes a motion for stay of sentence pending appeal, filing 14, is

granted. The sentence of probation shall not commence until such time as the judgment has become final or alternatively, after resentencing if the case is remanded.

DATED this 24th day of October, 2006.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge